



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED
FROM DIRECTOR'S OFFICE

Eugene Lieberstein
Anderson, Kill & Olick
1251 Avenue of the Americas
New York, New York 10020-1182

AUG 12 2005

TECHNOLOGY CENTER 3600

Inventor: Robert Skvorecz
Application No. 09/772,278
Filed: March 15, 2001
Attorney Docket No.: 4336
For: WIRE CHAFING STAND

PETITION TO HAVE A
DECLARATION ENTERED
UNDER
37 C.F.R. 1.181

This is in response to applicant's petition filed on May 9, 2005 to have a 37 CFR 1.132 declaration considered after a Final rejection.

The petition is **DENIED**.

The petitioner argues that in response to an Appeal filed in March of 2003 the examiner reopened prosecution making a new rejection upon which a Final rejection was issued on December 30, 2003. The petitioner further urges that the examiner made an allegation concerning the operation of the applied reference in the rejection under 35 USC 102, and it is in response to this that the petitioner filed the declaration under 37 CFR 1.132 as evidence of the impossibility of the operation of the reference as indicated by the examiner.

A review of the file record indicates that a complete Appeal Brief was filed by petitioner on January 22, 2004 and in response to this the examiner reopened prosecution with a Non-Final rejection dated May 4, 2004 applying new prior art. Petitioner made a complete response on August 6, 2004 and the examiner followed this with a Final rejection dated December 30, 2004. Both of the Office actions contained the same rejection under 35 USC 102 relying on the same prior art and with the same analysis. In response to the Final rejection petitioner filed a response After Final dated March 25, 2003, which contained a Declaration directed to deficiencies with the prior art applied by the examiner in both the May 4, 2004 and the December 30, 2004 Office actions. The examiner responded to this Declaration with an Advisory Action dated April 26, 2005 indicating that the Declaration wouldn't be entered since it wasn't timely filed.

Since the May 4, 2004, and December 30, 2004 Office actions contained the same rejection there is no reason that the Declaration couldn't have been filed in response to the May 4, 2004, Office action.

Accordingly, the filing of the Declaration after the Final rejection dated December 30, 2004 is not considered to be timely since it could have been submitted after the May 4, 2004 Office action since the same issues were raised therein.

Any questions related to this decision should be directed to Robert Olszewski at (571) 272-6788.

Summary: *Petition Denied*



John J. Love, Director
Patent Technology Center 3600
(571)-272-5250

RPO/snm:8/03/05

